



If you would like assistance preparing for a CFPB examination or determining whether your existing documents, policies, and procedures are compliant with federal consumer protection laws, please contact Suzanne Garwood at 202.344.8046.

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CFPB: SEPTEMBER ROUNDUP

Turning its focus from mortgage regulation to its enforcement authority, last month the CFPB announced yet another significant penalty against a credit card issuer related to the sale of “add on” products. Additionally, the CFPB held the first meeting of its Consumer Advisory Council, issued examination guidelines for credit reporting agencies and announced its five-year strategic plan.

ENFORCEMENT

“Add-On Products”

Together with another federal banking regulator, the CFPB announced a settlement with another major credit card issuer. Director Cordray heralded the settlement stating that it will put “\$200 million back into the pockets of more than 3.5 million American consumers.” Similar to an action taken last month, the basis of the settlement was the sale of four credit card add-on products – payment protection, credit score tracking, identity theft protection, and wallet protection.

The CFPB believes that the issuer used deceptive telemarketing techniques for the purpose of selling the add-on products. More specifically, the CFPB maintains that the scripts:

- **“Free Benefits.”** Often used language implying that the products were additional free “benefits,” rather than products for which a fee would be applied.
- **“Printed Materials.”** Frequently suggested that consumers would not be charged for the products until after having a chance to review printed materials; however, the materials were not provided until after the consumer purchased a product.
- **No Consent:** Caused consumers to be enrolled and charged without consent.
- **Eligibility Requirements.** Typically did not disclose critical eligibility requirements for certain payment protection benefits, such as exclusions for pre-existing medical conditions and certain limitations concerning employment.

The order covers customers of the issuer from December 1, 2007 to August 31, 2011, but excludes those customers who affirmatively used the Payment Protection product. Otherwise, consumers affected by the order who are still current card holders will automatically receive a credit to their accounts. Those consumers who are no longer customers will receive a check in the mail. The restitution amount will vary from consumer to consumer, but each consumer will receive a refund of at least 90 days’ worth of fees paid. The issuer will issue these refunds without any action on the part of any consumer.

In addition to the restitution described above, the issuer is required to institute certain changes to its telemarketing of add-on products to ensure that unlawful acts do not occur again. In keeping with this, the issuer will submit a compliance plan to its regulators. The issuer also must submit to an independent audit to ensure its compliance with the restitution terms of the order. And, finally, the issuer will pay a \$14 million penalty divided between the agencies.



A copy of the order and a fact sheet on the order is available here:

<http://www.consumerfinance.gov/pressreleases/discover-consent-order/>

Despite the issuance of the order along with its fines and oversight requirements, a spokesman for the issuer stated in a telephone interview that the company's current intention is to continue to market the products that were the basis of the order.

(<http://www.bloomberg.com/news/2012-09-24/discover-to-keep-selling-card-add-ons-in-wake-of-u-s-penalties.html>)

CID PushBack

The CFPB has made available information regarding companies' response to Civil Investigative Demands ("CID"). Generally speaking, the Director can respond in three ways to a CID: (i) reaffirm the decision to obtain the information; (ii) modify the demand, or (iii) set it aside altogether. In response to a recent challenge to a CID, the Director reaffirmed the CID and ordered a mortgage lending company to comply with the CID within 21 days. This information is available here:

<http://www.consumerfinance.gov/guidance/petitions-to-modify-or-set-aside/>

SUPERVISION

Now that the Bureau has direct supervisory authority over those credit reporting agencies ("CRAs") that are "larger participants" (in July, the CFPB published a final rule giving the Bureau the authority to supervise consumer reporting agencies that have more than \$7 million in annual receipts), the Bureau has issued examination procedures for examining such entities: (<http://www.consumerfinance.gov/guidance/supervision/manual/>). This supervisory authority became effective as of September 30, 2012.

The CFPB's examination of CRAs will cover one or more of the following modules:

- **Entity Business Model.** Determine whether the entity engages in business as a credit reporting agency, "nationwide" credit reporting agency, or reseller.
- **Accuracy of Information and Furnisher Relations.** Determine whether the CRA ensures maximum possible accuracy regarding consumer information.
- **Contents of Consumer Reports.** Review the inclusion of information in consumer reports.
- **Permissible Purposes and Other User Issues.** Ensure that anyone who obtains a consumer report must have a permissible purpose.
- **Consumer File and Score Disclosures.** Ensure that CRAs provide access for consumers to their consumer reports and scores.
- **Consumer Inquiries, Complaints, and Disputes and the Reinvestigation Process.** Set forth requirements for investigation of consumer disputes.
- **Consumer Alerts and Identity Theft Provisions.** Set forth requirements to address identity theft and protect active duty military.



- **Prescreening, Employment Reports, and Investigative Consumer Reports.** Set forth requirements for CRAs that engage in prescreening and investigative consumer reports.
- **Other Products and Services and Risks to Consumers.** Review the provision of products that may constitute consumer financial products, but that are not discussed above.

MISCELLANEOUS

Strategic Plan

The CFPB identifies the following four goals that it plans to meet over the next five years (until 2018):

- Prevent financial harm to consumer while promoting good practices that benefit them;
- Empower consumers to live better financial lives;
- Inform the public, policy makers and the CFPB's own policy-making with data-driven analysis of consumer finance markets and consumer behavior; and
- Advance the CFPB's performance by maximizing resource productivity and enhancing impact.

To meet these various goals, the CFPB sets forth twenty-five strategies and twenty-seven performance measures. These strategies include developing a highly advanced rule-writing team, working with consumers and industry stakeholders and leveraging technology. The public is encouraged to weigh in by emailing comments to StrategyPlanComments@cfpb.gov by October 25, 2012.

Study on Credit Scores

As directed by the Dodd-Frank Act, the CFPB released its study comparing credit scores sold to consumers versus those sold to lenders. The study is available here: http://files.consumerfinance.gov/f/201209_Analysis_Differences_Consumer_Credit.pdf

Results of the study included:

- **Similar Information.** For a majority of consumers the scores produced by different scoring models provided similar information about the relative creditworthiness of the consumers. Said differently, if a consumer had a good score from one scoring model the consumer likely had a good score on another model.
- **High Correlations.** Correlations across the results of scoring models were high, generally over .90 (out of a possible one). The study found that different scoring models would place consumers in the same credit-quality category 73-80% of the time. Different scoring models would place consumers in credit-quality categories that are off by one category 19-24% of the time. And from 1-3% of consumers would be placed in categories that were two or more categories apart.



- **Little Demographic Differences.** Different scores did not appear to treat different groups of consumers systematically differently than other scoring models. The study found less variation among scores for younger consumers and consumers who live in lower-income or high-minority population ZIP codes than for older consumers or consumers in higher-income or lower-minority population ZIP codes.

Consumer Advisory Board

On September 27, the CFPB's Consumer Advisory Board held its inaugural meeting in St. Louis, Missouri. The Board is comprised of 25 experts from across the spectrum of financial services providers, including university professors and representatives from credit unions:

- *Chairperson:* Jose Quinonez, Executive Director, Mission Asset Fund
- *Vice Chairperson:* Bill Bynum, CEO, Hope Enterprise Corp.
- Gary Acosta, Co-Founder, National Association of Hispanic Real Estate Professionals
- Jo Ann Barefoot, Co-Chair, Trelia Risk Advisors
- Don Baylor, Senior Policy Analyst for Economic Opportunity, Center for Public Policy Priorities
- Maeve Brown, Executive Director, Housing and Economic Rights Advocates
- Steve Carlson, Head of Marketing, Mint.com
- Laura Castro de Cortes, Vice President of Alternative Financial Services, Centris Federal Credit Union
- Elizabeth Costle, Director of Consumer and State Affairs, AARP Public Policy Institute
- Prentiss Cox, Associate Professor of Law, University of Minnesota
- Patricia Duarte, Director, Neighborhood Housing Services of Phoenix
- Patricia Hasson, President, Clarifi
- Adam Levitin, Professor of Law, Georgetown Law School
- James McCarthy, President/CEO, Miami Valley Fair Housing Center
- Jennifer Mishory, Deputy Director, Young Invincibles,
- William Nelson, Executive Director, USA Cares
- Michelle Peluso, Global Consumer Chief Marketing and Internet Officer, Citigroup
- Dory Rand, President, Woodstock Institute
- Annette Rizzo, Judge, First Judicial District of Pennsylvania
- Ellen Seidman, Chair, Board of Directors of the Center for Financial Services Innovation
- Josh Silverman, President for U.S. Consumer Services, American Express
- Robert Stoll, Founder, Stoll Berne LLC
- Donna Tanoue, Vice Chairman, Bank of Hawaii
- Jane Thompson, CEO and Founder, Jane J. Thompson LLC
- Jonathan Zinman, Associate Professor, Dartmouth College

The purpose of the Board is outlined in Section 1014(a) of the Dodd-Frank Act, which states that the Board will “advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws” and “provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.” To carry out this purpose, the Board will generally serve as a vehicle for market intelligence and expertise for the Bureau and it will include identifying and assessing the impact on consumers and other market participants of new,



emerging, and changing products, practices, or services. Information regarding the Board's charter and its members' biographies are available here: <http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-announces-consumer-advisory-board-members/>.

REGULATIONS

OUTSTANDING FEDERAL REGISTER PUBLICATIONS

Topic	Comment Deadline	Status	Effective Date
Remittances	N/A	Final Rule	February 7, 2013
Mortgage Servicing amending Regulation Z: (i) initial interest rate adjustment notices for ARMs; (ii) periodic statements for residential mortgage loans; and (iii) prompt crediting of payments and response for payoff amounts.	October 9, 2012 (comments on Paperwork Reduction Act due 10/15/12)	Proposed Rule	N/A
Mortgage Servicing amending Regulation X: Requests comment regarding proposed amends to Regulation X to address seven servicer obligations: (i) correct errors asserted by mortgage loan borrowers; (ii) provide information requested by mortgage loan borrowers; (iii) ensure reasonable basis exists to obtain force-place insurance; (iv) establish reasonable information management policies and procedures; (v) provide information about mortgage loss mitigation options to delinquent borrowers; (vi) provide delinquent borrower	October 9, 2012 (comments on Paperwork Reduction Act due 10/15/12)	Proposed Rule	N/A



access to servicer personnel with continuity of contact about the account; and (vii) evaluation of borrowers' application for available loss mitigation options.			
Appraisals (amendments to Regulation B and higher risk appraisals)	October 15, 2012	Proposed Rule	N/A
Loan originator compensation and steering	October 16, 2012	Proposed Rule	N/A
Preemption of state laws for gift cards	October 22, 2012	Request for Comment	N/A
Seeking public comment on effective financial education approaches	October 31, 2012	Request for Comment	N/A
Integrated Mortgage Disclosures	November 6, 2012 (certain portions close 09/07/2012)(finance charge comments extended to November 6, 2012)	Proposed Rule	N/A
High Cost Mortgage and Homeownership Counseling	November 6, 2012 (certain portions close 09/07/2012)	Proposed Rule	N/A

UPCOMING REGULATIONS

Topic	Next Regulatory Release	Anticipated Date of Next Activity
Requirements for Escrow Accounts (Regulation Z)	Final Rule	September 2012
Supervision of Larger Depository Institutions and Affiliates	Pre-Rule Stage	September 2012



Restatement of Regulations	Further Action	September 2012
Amendments to TILA and FIRREA Concerning Appraisals	Further Action	October 2012
Business Lending Data (Regulation B)	Pre-Rule Stage	October 2012
TILA Ability to Repay (Regulation Z)	Final Rule	December 2012
Disclosure of Records	Final Rule	December 2012
Registration of Certain Nondepository Covered Persons	NPRM	January 2013
Home Mortgage Disclosure Act (Regulation C)	Pre-Rule Stage	April 2013
Alternative Mortgage Transaction Parity (Regulation D)	NPRM	June 2013
TILA Amendments (i.e., rescission)	TBD	TBD

Please do not hesitate to contact the attorneys in our CFPB Task Force if you have any questions or concern regarding this update and the potential impacts of CFPB activities on your business.

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